

**BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

**CONSUMERS FOR CHOICE; TIM SNIPES; AND JOHN STOOS,
Respondents.**

Case No. 15/078

OAH No. 2019110142

PROPOSED DECISION

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 10, 2020, in Sacramento, California.

Michael W. Hamilton, Commission Counsel, represented complainant Galena West, Chief, Enforcement Division, Fair Political Practices Commission (FPPC).

Respondent John Stoos appeared and represented himself and respondent Consumers for Choice (CFC).¹ John Feliz, political strategist, was also present on behalf of CFC.

¹ Respondent Stoos appeared on behalf of CFC for the period of October 5, 2012 through December 31, 2016 only.

Respondent Tim Snipes did not file a notice of defense, nor did he or anyone else appear on his behalf. The notice of hearing was timely and properly served on all parties. Accordingly, the matter proceeded in default as to respondent Snipes pursuant to Government Code section 11520, subdivision (a).²

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 10, 2020.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity on August 14, 2018, following an April 19, 2017 finding of probable cause that respondents violated the Political Reform Act (Act), found at Government Code sections 81000 et seq.³ Specifically, the Accusation alleges respondents CFC and Snipes failed to timely file a semi-annual campaign statement covering the reporting periods of July 1 through December 31, 2011, and January 1 through June 30, 2012. The Accusation further alleges respondents CFC and Stoos failed to identify PAQ, Inc., doing business as Food 4 Less (Food 4 Less), as a sponsor in two mass mailers, as well as failed to timely report an accrued expense for a mailer on the semi-annual campaign statement covering the

² That section provides: "If the respondent either fails to file a notice of defense, or, as applicable, notice of participation, or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent . . . "

³ Unless otherwise stated, all further statutory references are to the Government Code.

reporting period of July 1 through December 31, 2012. Respondents Stoos and CFC timely filed a notices of defense. This hearing followed.

Political Reform Act

2. In enacting the Act, California voters specifically found and declared that previous laws regulating political practices had suffered from inadequate enforcement by state and local authorities, and that it was their purpose that the Act be vigorously enforced and liberally construed to accomplish its purpose. (§§ 81001, subd. (h), 81002, subd. (f), and 81003.) One of the stated purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters may be fully informed and improper practices may be inhibited. (§ 81002, subd. (c).) In furtherance of this purpose, the Act establishes a comprehensive campaign reporting system.

3. Under the Act, elected officials, candidates, and qualified committees are required to file a semi-annual campaign statement by July 31 for the reporting period of January 1 through June 30, and by January 31 for the reporting period of July 1 through December 31. (§ 84200.) In the statement, committees must report the total amount of expenditures made during the reporting period. For each expenditure of \$100 or more, the committee is required to disclose the full name of the recipient, the recipient's address, the expenditure amount, and a brief description of the purpose of the expenditure. (§ 84211.)

4. A committee is considered to be "sponsored" if it receives 80 percent or more of its contributions from a single source. (§ 82048.7, subd. (b)(1).) A sponsored committee is required to list the name of its sponsor on its Statement of Organization. (§ 84102, subd. (a); Cal. Code Regs., tit. 2, § 18419, subds. (b)(1) & (2).) Moreover,

"[w]henever identification of a sponsored committee is required by [the Act], the identification shall include the full name of the committee as required in its Statement of Organization." (§ 84106, subd. (a).)

5. An "independent expenditure" is an expenditure for a communication which advocates the election or defeat of a clearly-identified candidate that is not made at the behest of any candidate or committee. (§ 82031.) A committee that makes an independent expenditure supporting or opposing a candidate must include a disclosure statement on its advertisement which identifies the full name of the committee making the independent expenditure. (§ 84506, subd. (a)(1).)

CFC as a Qualified Committee

6. On September 29, 2011, CFC filed an original Statement of Organization with the California Secretary of State's Office (SOS). CFC was formed as a state general purpose committee. A general purpose committee is a committee "which is formed or exists primarily to support or oppose more than one candidate or ballot measure" (§ 82027.5, subd. (a).) Respondent Snipes signed the form and was listed as CFC's principal officer and treasurer.

7. On October 21, 2011, respondent Snipes opened a bank account for CFC and therein deposited a check from Food 4 Less for the amount of \$11,500. Subsequently, Food 4 Less reported the \$11,500 payment to CFC as a monetary contribution on its Major Donor and Independent Expenditure Committee Campaign Statement (Major Donor Statement). Thus, CFC qualified as a committee and was obligated to file semi-annual campaign statements under the Act. (§ 84200). On October 24, 2011, CFC added respondent Stoos as a member and signer to its bank account.

8. Thereafter, CFC used the \$11,500 contribution from Food 4 Less to support Mike Kline and other candidates in the 2011 City of Ceres election. Specifically, CFC hired 3AM Communications to produce a postcard supporting Mike Kline. CFC also hired 3AM Communications to produce a doorhanger listing a slate of candidates, and Grassroots Army to deliver the doorhangers. During this time, CFC also made multiple payments to respondent Snipes and/or his firm Political Dynamics for "consulting services." The checks to respondent Snipes were signed by respondent Stoos.

Semi-Annual Statements

9. As a qualified committee, CFC was required to file a semi-annual campaign statement for the reporting periods of July 1 through December 31, 2011. It failed to do so.

10. On January 1, 2012, CFC issued a check from its bank account made payable to respondent Snipes in the amount of \$1,200. Respondent Stoos signed the check on behalf of CFC.

11. On January 3, 2012, respondent Snipes deposited into CFC's bank account a check from Food 4 Less in the amount of \$3,500. Subsequently, Food 4 Less reported the \$3,500 payment to CFC as a monetary contribution on its Major Donor Statement. CFC made expenditures of approximately \$1,300 during the reporting period of January 1 through June 30, 2012. Respondent Snipes failed to timely file a semi-annual campaign statement for CFC for this reporting period.

12. On October 5, 2012, respondent Stoos filed a Semi-Annual Statement of No Activity for CFC, which respondent Stoos signed under penalty of perjury. In the statement, respondent Stoos certified that CFC had no expenditures nor contributions

for the January 1, 2012 to June 30, 2012 reporting period. No semi-annual campaign statement disclosing CFC's contributions and expenditures was ever filed for the period of January 1, 2012, to June 30, 2012, by respondent Stoos or anyone else on behalf of CFC.

13. On October 5, 2012, respondent Stoos also filed an amended Statement of Organization, identifying himself as CFC's new treasurer and certifying that CFC qualified as a committee as of October 21, 2011 – the same date CFC received and deposited the first Food 4 Less contribution.

Campaign Opposing Ken Cooley

14. At all times relevant, Bob Gutierrez (Gutierrez) was the Director of Government Affairs for Food 4 Less. On September 26, 2012, Food 4 Less made a monetary contribution in the amount of \$7,800 to Peter Tateishi's campaign for State Assembly in Assembly District 8. Ken Cooley was Tateishi's opponent in the race. In October 2012, Food 4 Less made monetary contributions totaling \$35,000 to CFC. Food 4 Less was CFC's sole contributor during the reporting period of June 1, 2012 to December 31, 2012.

15. Rob Stutzman (Stutzman) is the founder and president of Stutzman Public Affairs. In late 2012, Stutzman's long-time client, JOBS PAC,⁴ hired him to produce a direct-mailer campaign opposing Cooley and supporting Tateishi in the November 6, 2012 election. Marty Wilson was the contact person for JOBS PAC.

⁴ At all relevant times, JOBS PAC was a political action committee governed by the California Chamber of Commerce and the California Manufacturers and Technology Association.

Around the same time, Stutzman was also asked to produce a direct mail campaign against Cooley on behalf of CFC. Gutierrez was Stutzman's contact person for the CFC mail campaign. Redwave Communications, LLC (Redwave) is a public affairs and direct mailing firm based in Iowa. Stutzman retained Redwave to print and send out the mailers for CFC.

FIRST MASS MAILER – OCTOBER 19-22, 2012

16. On October 16, 2012, Redwave invoiced CFC for the amount of \$27,888.48 to produce 58,101 mailers in opposition to Cooley's campaign. Redwave sent the invoice to Stutzman to forward to CFC. Stutzman forwarded the invoice to Gutierrez who, in turn, forwarded the invoice to CFC for payment.

17. On October 17, 2012, Stutzman sent a draft of the mailer to Gutierrez for approval, along with the Redwave invoice. Gutierrez forwarded the draft mailer and invoice to CFC. On October 19, 2012, respondent Stoos responded to Stutzman and Gutierrez by email stating, "The check is deposited and I have cut the check for Redwave. . . ."

18. The anti-Cooley mailer was sent out between October 19 and 22, 2012. While it included a disclaimer that it was produced and paid for by CFC, it did not disclose Food 4 Less as CFC's sponsor. On October 19, 2012, respondent Stoos filed a Late Independent Expenditure Report with the SOS, which disclosed an expenditure of \$27,888.48.

SECOND MASS MAILER – OCTOBER 27 – 29, 2012

19. On October 22, 2012, Stutzman sent Gutierrez a draft of a second anti-Cooley mailer and asked if the mailer would be issued by CFC. Gutierrez responded, "It

would yes How much is this run? Need to check funds." On October 23, 2012, Stutzman emailed Redwave and confirmed that the second mailer was "approved for print."

20. On October 24, 2012, Redwave invoiced CFC for the amount of \$27,382.56 to produce a second anti-Cooley mailer (57,047 pieces). Redwave emailed the invoice to Stutzman to forward to CFC. That evening, Stutzman forwarded the invoice to Gutierrez by email, in which he stated: "The war effort required the missiles keep firing. So here's the invoice. Drop date is 10/26. Pay whatever portion you can and then Marty can discuss how the balance can be paid." Gutierrez responded less than 20 minutes later stating, "Got it. Was on the road today. Will get \$ numbers in am [*sic*]. Thanks."

21. On October 26, 2012, respondent Stoos prepared a Late Independent Expenditure Report, which disclosed CFC had an independent expenditure in the amount of \$27,382.56, for the second anti-Cooley mailer which was sent between October 27 and 29, 2012. Respondent Stoos filed the statement with the SOS, which received the document on October 29, 2012. As of the date of hearing, Redwave had not been paid for the second invoice and an outstanding balance of \$27,382.56 remains.

22. Respondent Stoos failed to report the \$27,382.56 accrued expense on CFC's semi-annual campaign statement for the July 1 through December 31, 2012 reporting period. CFC terminated as a qualifying committee on December 31, 2016. Respondent Stoos served as CFC's treasurer from October 5, 2012, until its termination on December 31, 2016.

Respondents' Evidence

23. Respondent Stoos was the sole witness who testified on respondents' behalf at hearing. He has almost 35 years' experience working in politics. He was named as CFC's treasurer in 2012. He denied he was directing any of CFC's activities in 2011. Nonetheless, he argued that, in 2011, CFC was a nonprofit organization involved in voter registration and voter outreach activities under Internal Revenue Service Code section 501(c)(4). During this time, respondent Stoos signed CFC checks made payable to respondent Snipes for consulting services because respondent Snipes "didn't want to write checks to himself."

24. Respondent Stoos maintained that CFC did not become a qualified committee until October 2012, when it became involved in the anti-Cooley campaign mailers. At that time, respondent Stoos attempted to bring current CFC's filings. He did not review CFC's bank statements from January 1, 2012 to June 30, 2012 prior to his filing the Semi-Annual Statement of No Activity on October 5, 2012. To the best of his knowledge, CFC had no reportable activity during that time period so there was no need to review the bank statements.

25. Additionally, respondent Stoos denied that he certified CFC as a political committee as of October 21, 2011. Rather, on October 5, 2012, he amended the Statement of Organization previously filed by respondent Snipes to reflect the change in treasurer. He did not intend to certify CFC as a political committee prior to October 5, 2012.

26. Respondent Stoos conceded that CFC approved and issued the first anti-Cooley mailer from October 19 through 22, 2012. However, he denied that CFC issued or approved the second anti-Cooley mailer which was ultimately sent out between

October 27 and 29, 2012. Respondent Stoos explained that CFC had originally planned to send three mailers, funded by three separate donors, in opposition to the Cooley campaign. However, Food 4 Less was the only donor which actually made a contribution, thus CFC issued the first mailer only.

27. Respondent Stoos received the October 24, 2012 Redwave invoice and used it to complete the Late Independent Expenditure Report. He explained that, as of that Friday, October 26th,⁵ he believed funding from other donors would be coming soon and acted accordingly "out of an abundance of caution." He did not learn until Saturday, October 27th, that CFC would receive no additional funding. Respondent Stoos admitted that, after learning CFC lacked funds for the mailer, he should have filed an amended Late Independent Expenditure Report.⁶ However, he maintained this was an oversight and did not warrant the \$5,000 fine sought by complainant.

28. Respondent Stoos also denied that CFC was a sponsored committee, despite 100 percent of its contributions coming from a single source, Food 4 Less. Respondent Stoos again argued that CFC anticipated receiving contributions from other donors relating to the anti-Cooley campaign, and that he acted accordingly.

29. Finally, respondent Stoos asserted that he acted in good faith and exercised due diligence during his tenure as a volunteer treasurer for CFC. While he

⁵ Judicial notice is taken that October 26, 2012, was a Friday.

⁶ Respondent Stoos asserted he did not learn that the second mailer actually went out until the FPPC investigation.

admitted to making some mistakes, he believed CFC at all times substantially complied with the Act's disclosure requirements.

Discussion

VIOLATIONS OF THE ACT

30. A preponderance of the evidence established that CFC was a sponsored political committee as of October 21, 2011. On this date, Food 4 Less made an \$11,500 contribution to CFC. Food 4 Less disclosed this amount paid to CFC on its Major Donor Statement for the same reporting period. Food 4 Less was the sole contributor to CFC for the July 1, 2011 to December 31, 2011 reporting period, rendering CFC a sponsored committee which was required to disclose the identity of its sponsor. The fact that respondent Snipes listed CFC as a general purpose committee on the September 29, 2011 Statement of Organization is irrelevant. Respondent Stoos's argument that CFC was a nonprofit organization solely engaged in voter registration and voter outreach activities in 2011 was not credible. The evidence established that CFC received political donations from Food 4 Less in 2011, and used those funds to promote Mike Kline and other candidates in the City of Ceres election.

31. As a committee qualified under the Act, CFC was required to file semi-annual campaign statements. The evidence established CFC and respondent Snipes failed to file semi-annual campaign statements for the reporting periods of July 1 through December 31, 2011, and January 1 through June 30, 2012, despite having reportable contributions and expenditures during both periods.

32. The evidence further established that CFC sent a mass mailer on or around October 19, 2012, and a second mass mailer on or around October 27, 2012, both of which were independent expenditures attacking Cooley's campaign. Although

the mailers disclosed CFC as the sponsor and payee of the ads, neither identified Food 4 Less as CFC's sponsor, as required by law. Respondent Stoos's assertion that CFC was not responsible for and did not approve the second mailer was not credible. For both mailers, Stutzman primarily communicated with CFC through Gutierrez. On October 24, 2012, through Gutierrez, Stutzman sent the Redwave invoice to CFC and advised that October 26th was the "drop dead date" for the second mailer. On October 26, 2012, respondent Stoos prepared a Late Expenditure Disclosure Statement, for the exact same amount as the Redwave invoice for the second mailer. This is the same process respondent Stoos and CFC followed for the first mailer. The second mailer was sent out between October 27 and 29, 2012. The Late Expenditure Disclosure Statement was filed with the SOS effective October 29, 2012. Respondent Stoos made no efforts to withdraw the Late Expenditure Disclosure Statement, even though he learned CFC did not have the funds for the second mailer on October 27, 2012.

33. Finally, respondent Stoos was required to disclose the \$27,388.56 accrued expense from Redwave on CFC's semi-annual campaign statement for the reporting period of July 1 through December 31, 2012. He failed to do so.

APPROPRIATE PENALTY

34. A violation of the Act carries a maximum penalty of \$5,000 per violation. (§ 91005.5.)⁷ Here, complainant seeks the maximum amount for each of the five violations of the Act.

⁷ In its written hearing brief, complainant suggests respondent Stoos and CFC are also liable for a civil fine "up to three times the cost" of the anti-Cooley mailers, for a total of \$165,813.12, citing section 84510. However, that section authorizes this level

35. In determining an appropriate penalty, the FPPC and ALJ must consider: (1) the seriousness of the violation; (2) the presence or absence of any intention to conceal, deceive or mislead; (3) whether the violation was deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by consulting FPPC staff or any other government agency; (5) whether the violation was isolated or part of a pattern, and whether the violator has previously violated the Act; and, (6) whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure. (Cal. Code Regs., tit. 2, § 18361.5, subd. (d).)

36. Counts 1 and 2 (against respondent Snipes and CFC): Respondent Snipes and CFC failed to file semi-annual campaign statements for the reporting periods of July 1, 2011 through December 31, 2011, and January 1, 2012 through June 30, 2012. CFC received \$15,000 in contributions from Food 4 Less during this time, which it expended on political efforts to support or defeat local candidates. Said violations are serious as they skirt the Act's main objective: public disclosure. Respondent Snipes did not appear at hearing, nor did anyone appear on CFC's behalf concerning its actions in 2011. For these reasons, the maximum fine of \$5,000 for each violation is appropriate.

37. Counts 3 and 4 (against respondent Stoos and CFC): Respondent Stoos and CFC failed to disclose Food 4 Less as CFC's sponsor on the two anti-Cooley mass mailers it issued in October 2012. The violations are serious as they deprived the public of knowing which entity actually paid for the advertisements. However, there was no evidence that respondent Stoos acted with the intent to deceive or mislead.

of penalty for violations of sections 84503, 84504, 84504.3, or 84506.5 only. The Accusation does not allege violations of any of those sections, and therefore the penalty under section 84510 was not considered here.

Respondent Stoos has no history of violating the Act. There was no evidence these violations were part of a pattern rather than isolated acts which occurred close in time. For these reasons, a fine of \$1,000 for each violation is appropriate and will serve to deter recurrence of similar violations.

38. Count 5 (against respondent Stoos and CFC): Respondent Stoos and CFC failed to disclose the \$27,388.56 accrued expense from Redwave on CFC's semi-annual campaign statement for the reporting period of July 1 through December 31, 2012. The violation is serious as it contravenes the Act's main purpose of public disclosure. There was no evidence the violation was intentional, or part of a pattern to thwart public disclosure, as evidenced by respondent Stoos disclosing the expense in a Late Expenditure Disclosure Statement. Respondent Stoos and CFC fully cooperated with the FPPC's investigation. For these reasons, a fine of \$500 for this violation is appropriate.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the factual allegations in the Accusation and of establishing cause for penalty. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113.) The standard of proof is a preponderance of the evidence. (Evid. Code, § 115; Cal. Code Regs., tit. 2, § 18361.5, subd. (c).)

2. Complainant's authority to bring this action derives from California Code of Regulations, title 2 (2 CCR), sections 18361 and 18361.4, subdivision (e), and Government Code sections 83111, 83116, and 9100.5, which assign to the Enforcement Division the duty to administer, implement, and enforce the provisions of the Act.

3. Section 91005.5 provides, in pertinent part:

Any person who violates any provision of this title, except Sections 84305, 84307, and 89001, for which no specific civil penalty is provided, shall be liable in a civil action brought by the commission . . . for an amount up to five thousand dollars (\$5,000) per violation.

4. Section 84200 requires elected officials, candidates, and qualified committees to file a semi-annual campaign statement by July 31 for the reporting period of January 1 through June 30, and by January 31 for the reporting period of July 1 through December 31. As set forth in Factual Findings 6 through 9, 30 and 31, CFC was a qualified committee required to file a semi-annual campaign statement. Respondent Snipes and CFC violated section 84200 when they failed to timely file semi-annual campaign statements for CFC for the reporting period of July 1 through December 31, 2011, and therefore failed to disclose CFC's reportable contributions and independent expenditures for that period. Thus, cause exists to assess a monetary fine against respondents Snipes and CFC pursuant to sections 84200 and 91005.5. As set forth in Factual Finding 36, a \$5,000 fine is appropriate for this violation.

5. As set forth in Factual Findings 6 through 11, 30 and 31, respondent Snipes and CFC violated section 84200 when they failed to timely file a semi-annual campaign statement for CFC for the reporting period of January 1 through June 30, 2012, and therefore failed to disclose CFC's reportable contributions and independent expenditures for that period. Thus, cause exists to assess a monetary fine against respondents Snipes and CFC pursuant to sections 84200 and 91005.5. As set forth in Factual Findings 36, a \$5,000 fine is appropriate for this violation.

6. Section 84506, subdivision (a)(1), requires any "broadcast or mass mailing advertisement supporting or opposing a candidate . . . that is paid for by an

independent expenditure," to include a disclosure statement that identifies the name of the committee making the independent expenditure. As set forth in Factual Findings 6 and 7, 12 through 18, and 32, CFC was a sponsored committee and Food 4 Less was its sole sponsor. Respondent Stoos and CFC failed to identify Food 4 Less as CFC's sponsor on CFC's mass mailer sent out around October 19, 2012. Thus, cause exists to assess a monetary fine against respondents Stoos and CFC pursuant to sections 84506, subdivision (a)(1), and 91005.5. As set forth in Factual Finding 37, a \$1,000 fine is appropriate for this violation.

7. As set forth in Factual Findings 6 and 7, 12 through 15, 19 through 21, and 32, respondent Stoos and CFC failed to identify Food 4 Less as CFC's sponsor on the mass mailer sent out around October 27 2012. Thus, cause exists to assess a monetary fine against respondents Stoos and CFC pursuant to sections 84506, subdivision (a)(1), and 91005.5. As set forth in Factual Finding 37, a \$1,000 fine is appropriate for this violation.

8. Section 84211 provides, in relevant part:

Each campaign statement required by this article shall contain all of the following information:

[¶] . . . [¶]

(i) The total amount of expenditures made during the period covered by the campaign statement to persons who have received one hundred dollars (\$100) or more.

[¶] . . . [¶]

(k) for each person to whom an expenditure of one hundred dollars (\$100) or more has been made during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) The date and amount of each expenditure.

(4) A brief description of the consideration for which each expenditure was made.

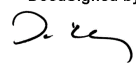
9. As set forth in Factual Findings 6 and 7, 12 through 22, and 33, CFC accrued an expense of \$27,388.56 for a mass mailer sent out on or around October 27, 2012. Respondent Stoos and CFC were required to report this accrued expense on CFC's semi-annual campaign statement for the reporting period of July 1 through December 31, 2012, but failed to do so. As such, cause exists to assess a monetary fine against respondents Stoos and CFC pursuant to sections 84211 and 91005.5. As set forth in Factual Finding 38, a \$500 fine is appropriate for this violation.

ORDER

Respondents Tim Snipes and Consumers for Choice are ordered to pay to the Fair Political Practices Commission a monetary penalty of \$10,000, within 30 days of the effective date of this decision.

Respondents John Stoos and Consumers for Choice are ordered to pay to the Fair Political Practices Commission a monetary penalty of \$2,500, within 30 days of the effective date of this decision.

DATE: March 11, 2020

DocuSigned by:

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TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings